

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MASSACHUSETTS  
WESTERN DIVISION**

In re:

Industrial Commercial Electrical, Inc.,  
*et al.*  
Debtors

Chapter 11  
Case No. 02-45451 (JBR)  
Jointly Administered

**ORDER ON JOINT MOTION OF DEBTORS, FLAGSHIP BANK AND TRUST  
COMPANY AND OFFICIAL COMMITTEE OF UNSECURED CREDITORS FOR  
ENTRY OF ORDER PURSUANT TO SECTION 105(a) OF THE BANKRUPTCY CODE  
AND FEDERAL RULES OF BANKRUPTCY PROCEDURE 2002(a), 7041 and 9019  
APPROVING STIPULATION OF SETTLEMENT.**

This matter came before the Court for a non-evidentiary hearing on the Joint Motion of Debtors, Flagship Bank and Trust Company and Official Committee of Unsecured Creditors for Entry of Order Pursuant to Section 105(a) of the Bankruptcy Code and Federal Rules of Bankruptcy Procedure 2002(a), 7041 and 9019 Approving Stipulation of Settlement [#489]. The IRS has objected [#492] to the Motion on several grounds, including that the settlement calls for an impermissible third party release. The IRS has commenced an action against Flagship Bank & Trust Company in the United States District Court for the District of Massachusetts in which the IRS seeks an order that the Bank pay it the amount of money which the IRS tendered to the Debtor as a "tentative refund" and which the Debtor turned over to the Bank.<sup>1</sup> Under the settlement the IRS would be barred from recovering this money from the Debtor or the

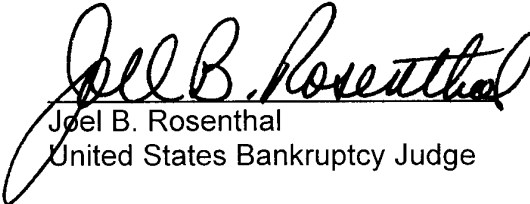
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<sup>1</sup>This Court previously ruled that the IRS was not entitled to an administrative claim against the estate for the return of the tentative refund. 304 B.R. 24 (Bankr. D. Mass. 2004). The District court reversed on appeal. 319 B.R. 35 (D.Mass. 2005).

Bank.

In essence the movants seek to obtain from this Court an order that will compel the dismissal of the District Court action. Whatever the merits of the IRS' complaint against the Bank is not for this Court to decide. It is a matter that resides with the District Court and not within the jurisdiction of this Court. Furthermore, the proposed settlement calls for the IRS' administrative claim to be paid, in *pari passu*, with other administrative creditors but in the current posture of the case it is unclear what the dividend to these administrative creditors will be. Until the other litigation that will influence the dividend is resolved, the Court cannot determine that the settlement is in the best interest of creditors. Because the settlement is not in the best interest of creditors, see *Jeffrey v. Desmond*, 70 F.3d 183, 185 (1st Cir.1995) and the movants all acknowledge that the third party release is an integral part of the settlement and will not go forward with the compromise absent this provision, the Motion is DENIED.

Dated: February 14, 2006

  
Joel B. Rosenthal  
United States Bankruptcy Judge